

10-17-11 2:17

IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

82-CV-11-5126

STATE OF MINNESOTA
COUNTY OF WASHINGTON

DISTRICT COURT
TENTH JUDICIAL DISTRICT
Case type: Other Civil – Torrens

In the matter of the Petition of
Wells Fargo Bank, N.A.;

ORDER TO SHOW CAUSE

in Relation to Certificate of Title No.59023
issued for land in the County of
Washington and State of Minnesota and
legally described as follows:

The East One hundred forty-five (145) feet
of the South Eighty-six and twenty-five
hundredths (86.25) feet of Lot Fourteen
(14), COUNTY AUDITOR'S PLAT
NUMBER 1, as surveyed and platted and
now on file and of record in the office of
the Registrar of Titles of Washington
County, Minnesota

**TO: LAURIE A. HAYES, USAA FEDERAL SAVINGS BANK, UNITED
STATES OF AMERICA (UNITED STATES DEPARTMENT OF
TREASURY – INTERNAL REVENUE SERVICE), AND PARTIES IN
POSSESSION OF THE PREMISES:**

Upon receiving and filing the Report of the Examiner of Titles in the above-entitled matter, IT IS ORDERED, that you, and all persons interested, appear before this Court on Monday December 19, 2011 at 9:00 a.m., in the Washington County Government Center, 14949 – 62nd Street North, Stillwater, County of Washington, State of Minnesota and then, or as soon thereafter as the above-entitled matter can be heard, show cause, if there is any, why this Court should not enter the following:

An Order of Priority on Certificate of Title No. 59023 adjudicating that Petitioner's mortgage recorded as Washington County Registrar of Titles Document No. 1199564 is prior and superior to that certain Notice of Federal Tax Lien in favor of the United States and against taxpayers Timothy F. Hayes and Laurie Hayes of 812 North Williams Street, Stillwater, MN 55082-4462, which



federal tax lien is dated May 21, 2010 and recorded May 26, 2010 as Washington County Recorder Document No. 3792968, filed by the Internal Revenue Office in Chicago, IL, Small Business Self-Employed Area #4.

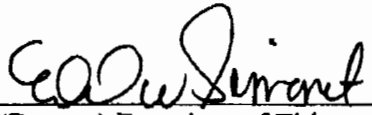
Attendance is required only of those who wish to object to the above-described Order.

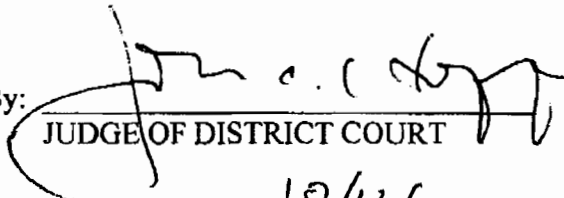
IT IS FURTHER ORDERED that this Order to Show Cause be served:


- (a) at least 10 days before the hearing upon the above-named parties residing in this State in the manner provided by law for the service of Summons in a civil action;
- (b) at least 14 days before the hearing upon each of the above-named nonresidents by sending a copy of this Order to such nonresidents' post office address, by registered or certified mail, return receipt requested;
- (c) upon each of the above-named parties who cannot be found by two weeks published notice and by sending another copy of this Order at least 14 days prior to the hearing by first class mail to the last known address of the party and by sending another copy of this Order at least 14 days before the hearing by first class mail to the address of such party as stated on the Certificate of Title if an address is so stated; or
- (d) upon a dissolved, withdrawn, or revoked business entity governed by Minn. Stat., Chp. 302A, 303, 317A, 322B or 323 in the manner provided by Minn. Stat. § 5.25.
- (e) Notwithstanding anything to the contrary herein, upon the United States in accordance with 28 U.S.C. § 2410, 43 U.S.C. §666 (a) and 28 C.F.R. §0.77(j), by serving this Order to Show Cause with a copy of the Petition upon the United States attorney for the district in which the action is brought or upon an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought and by sending copies of the Order to Show Cause and Petition, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia. In such actions the United States may appear and answer, plead or demur within sixty days after such service or such further time as the court may allow.

APPROVED: Edward W. Simonet,
Examiner of Titles

Dated: _____, 2011

By: 
(Deputy) Examiner of Titles

By: 
JUDGE OF DISTRICT COURT
10/12/11


Matthew A. Anderson, #284257
Attorneys for Petitioner
MACKALL, CROUNSE &
MOORE, PLC
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, MN 55402
Telephone: (612) 305-1401
Fax No.: (612) 305-1414

IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION

STATE OF MINNESOTA
COUNTY OF WASHINGTON
 In the matter of the Petition of
 Wells Fargo Bank, N.A.,

Court File No. CW 115126
 File #
WASHINGTON COUNTY
DISTRICT COURT
AUG 31 2011
 COURT ADMINISTRATOR
 By [Signature] Deputy

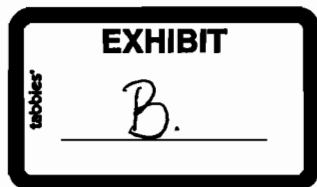
DISTRICT COURT
TENTH JUDICIAL DISTRICT
 Case type: Other Civil (Torrens)
PETITION

For an Order subrogating Petitioner's
 mortgage to a prior mortgage under the
 doctrine of equitable subrogation

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF WASHINGTON COUNTY:

Comes now the Petitioner and shows to the Court as follows:

1. That on July 16, 2003 the Registrar of Titles entered Certificate of Title No. 59023 to Laurie R. Hayes for land described on the attached Exhibit A (the "Property").
2. That there are registered on the Certificate of Title memorials as shown on the attached Exhibit A.
3. Specifically, there are memorials of the following:
 - a. A mortgage from Laurie R. Hayes and Timothy F. Hayes, wife and husband, as mortgagors, and in favor of Wells Fargo Bank, N.A., as mortgagee, dated August 15, 2005 and recorded September 12, 2005 as Document No. 1160405 (the "Original Mortgage").
 - b. A memorial of a mortgage from Laurie R. Hayes and Timothy Hayes, non-vested spouse of Laurie Hayes, as mortgagors, and in favor of Wells Fargo Bank, N.A., as mortgagee, dated May 28, 2010 and recorded June 18, 2010 as Document No. 1199564, in the original principal amount of \$154,623 (the "New Mortgage").
 - c. A memorial of a mortgage in favor of USAA Federal Savings Bank dated September 27, 2007 and recorded November 2, 2007 as Document No. 1181177, in the original amount of \$100,000 (the "USAA Mortgage").



Certified to be a true and correct copy of the
 record of this case.
31 day of October, 2011.
 Court Administrator, Washington County
 By [Signature] Deputy
 File No. CW 115126

- d. A memorial a subordination agreement recorded June 18, 2010 as Document No. 1199565, in which USAA Federal Savings Bank subordinated the USAA Mortgage to the New Mortgage in favor of Petitioner.

4. A Notice of Federal Tax Lien in favor of the United States' Internal Revenue Service, dated May 21, 2010 and recorded May 26, 2010 as Document No. 3792968, has been filed with the Washington County Recorder (the "Tax Lien"). Because the instrument is a federal tax lien it does not appear as a memorial on the certificate of title. A copy of the Tax Lien is attached hereto as Exhibit "B."

5. The taxpayers identified in the Tax Lien are Laurie R. Hayes, the fee owner of the subject property, and Timothy F. Hayes, her husband who is deceased and has no interest in the Property.

6. The Tax Lien has been partially released. A copy of the release is attached hereto as Exhibit "C." The effect of this instrument is to release tax liens against Laurie Hayes "for the taxes listed below," with two separate tax liens listed:

- a. Taxes for the period ending 12/31/06 and assessed 5/28/07, with no unpaid balance identified; and
- b. Taxes for the period ending 12/31/06 and assessed 3/23/09, with an unpaid balance of \$5205.87.

The instrument also states that "[t]his certificate releases the IRS's claim to property and rights to property as it pertains to the tax years identified above for LAURIE R HAYES only.*"

7. The release of tax lien would appear to release all 2006 tax liens against Laurie R. Hayes, but when read in conjunction with the Tax Lien it is less clear. In that instrument, the taxes for the period ending 12/31/06 and assessed 5/28/07 are in the amount of \$5205.87. And the taxes for the period ending 12/31/06 and assessed 3/23/09 are in the amount of \$12,694.51, not \$5205.87.

8. The proceeds of the New Mortgage were used by Petitioner to pay in full and satisfy the Original Mortgage. The sum paid to satisfy the Original Mortgage was \$154,622.77, just \$0.23 less than the principal sum of the New Mortgage. In effect, Ms. Hayes simply exchanged a debt of \$154,623 with a new debt in the same amount. She neither took cash out through the refinancing of her home nor put additional cash in.

9. Petitioner's New Mortgage loan transaction closed on Friday May 28, 2010, and the disbursement date—after the requisite three-day right of rescission—was June 2, 2010. The IRS tax lien was recorded just two days before the closing date, and before the disbursement of loan proceeds.

10. Petitioner's New Mortgage should be equitably subrogated to the priority position of the Old Mortgage. The Tax Lien and the debt to the IRS were not disclosed to Petitioner in the uniform residential loan application or the borrower's affidavit. In closing the loan transaction without paying the IRS, the Petitioner acted under a justifiable or excusable mistake of fact that there were no other creditors with a lien against the Property.

11. The IRS is in certainly no worse position being junior to the New Mortgage than it would have been if its Tax Lien were junior to the Original Mortgage: the principal amount of both mortgages were identical. In fact, the IRS would conceivably be in a better position behind the New Mortgage, because its longer term (30 years instead of 15 years) resulted in lower and more manageable monthly mortgage payments. If the Tax Lien were permitted to be senior to the New Mortgage, the United States would stand to obtain an unearned windfall, being elevated in priority to first lien position.

12. If Petitioner's New Mortgage is not equitably subrogated to the priority position of the Old Mortgage and the United States' Tax Lien retains priority over Petitioner, then injury to Petitioner will result.

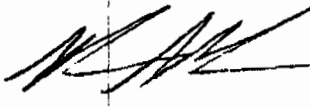
WHEREFORE Petitioner prays for an Order directing the Registrar of Titles to file an Order of Priority on Certificate of Title No. 59023 stating that the New Mortgage is prior and superior in interest to the Tax Lien.

In the alternative, if any portion of the Tax Lien is determined to be prior and superior to the interests of Petitioner, determine the extent and amount of the Tax Lien which is prior.

Dated this 22nd day of August, 2011.

MACKALL, CROUNSE & MOORE, PLC

By

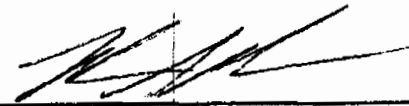

Matthew A. Anderson (#284257)
1400 AT&T Tower
901 Marquette Avenue
Minneapolis, Minnesota 55402
(612) 305-1401
Attorneys for Petitioner

STATE OF MINNESOTA)

) ss.

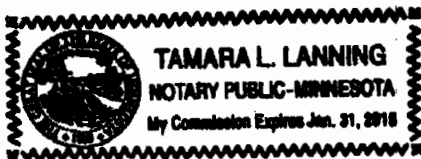
COUNTY OF HENNEPIN)

Matthew A. Anderson, having been first duly sworn on oath, deposes and states that he is the attorney for Wells Fargo Bank, N.A., Petitioner in the above entitled proceeding, that there are no officers of the Petitioner who are acquainted with the facts and capable of making an affidavit to verify the petition within the County where the attorney resides, that he has read the foregoing petition and that the same is true and of his own knowledge except as to matter therein stated on information and belief and as to such matters he believes it to be true.


Matthew A. Anderson

Subscribed and sworn to before me
this ~~22nd~~ day of August, 2011


Notary Public



*Approved by Form
Edouard Lanning*

Certificate of Title

No. 59023

Transfer from No. 47145. Originally registered the fourth day of September, 1953.

Register of Titles 15, Page 135, Washington County, Minnesota.

STATE of MINNESOTA,
COUNTY of WASHINGTON

REGISTRATION

This is to certify that

LAURIE R. HAYES, a married person,

residing at 812 William Street, in the City of Stillwater

County of Washington, and State of Minnesota

is now the owner of an estate; in fee simple

of and in the following described land, situated in the County of Washington and State of Minnesota:

The East One hundred forty-five (145) feet of the
South Eighty-six and twenty-five hundredths (86.25)
feet of Lot Fourteen (14),

COUNTY AUDITOR'S PLAT NUMBER 1,

as surveyed and platted and now on file and of record
in the office of the Registrar of Titles of Washington
County, Minnesota.

Subject to the encumbrances, liens and interest noted by the memorial underwriting or endorsed hereon; and subject to the following
rights or encumbrances subsisting, as provided in Section 508.25, Minnesota Statutes annotated, namely:

1. Liens, claims, or rights arising or existing under the laws or the Constitution of the United States, which this state cannot require to appear of record.
2. The lien of any real property tax or special assessment.
3. Any lease for a period not exceeding three years when there is actual occupation of the premises thereunder.
4. Still rights in public highways upon the land.
5. Such right of appeal or right to appear and contest the application as is allowed by this chapter.
6. The rights of any person in possession under deed or contract for deed from the owner of the certificate of title.
7. Any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.

That the said LAURIE R. HAYES (is/has) of the age of eighteen years or older,
is under no legal incapacity except Timothy F. Hayes, who (is/is not) of the age of eighteen years or older and is under no legal
incapacity except

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of my office

this sixteenth day of July, 2011

Linda Korman

Registrar of Titles, in and for the County of Washington and State of Minnesota

By: Joan A. Cornelius R.P.

Doc. No. 1132033

Deputy.

REAR GRAPHICS, INC.

EXHIBIT

A



OF ESTATES, EASEMENTS OR CHARGES ON THE LAND DESCRIBED IN THE CERTIFICATE OF TITLE HERETO ATTACHED.

Cindy Kozomarny
 By Jean M. Lindine Deputy JP
 Cindy Kozomarny
 By Jean M. Lindine Deputy JP
 Cindy Kozomarny
 By Jean M. Lindine Deputy JP
 Cindy Kozomarny
 By Jean M. Lindine Deputy JP
 Cindy Kozomarny
 By Linda Greger Deputy
 Cindy Kozomarny
 By Linda Greger Deputy
 Cindy Kozomarny
 By Linda Greger Deputy
 Cindy Kozomarny
 By Linda Greger Deputy
 Cindy Kozomarny
 By Linda Greger Deputy

Receipt#: 152770

HFT

\$46.00



3792988
Certified Filed and/or recorded on:
5/28/2010 8:30 AM

3792988

Return to:
RIS FILE - ST PAUL
218 NORTH ROBERT ST RM 230
ST PAUL MN 55101

Office of the County Recorder
Property Records & Taxpayer Services
Washington County, MN
Ken & J. Cushman, County Recorder

Notice of Federal Tax Lien

Return to:
County IRS file

\$46.00 charge

Exhibit

EXHIBIT

B

RECORDING DATA

INTERNAL REVENUE SERVICE FACSIMILE FEDERAL TAX LIEN DOCUMENT	Lien Recorded : 05/26/2009 9:39 AM Recording Number: 379344 UCC Number : Liber : Page :
Area: SMALL BUSINESS/SELF EMPLOYED AREA (4) Lien Unit Phone: (800) 829-3903	IRS Serial Number: 7010

This Lien Has Been Filed in Accordance with
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer :
TIMOTHY F & LAURIE R HAYES

Residence :
812 N WILLIAM STREET
STILLWATER, MN 55082-4462

With respect to each assessment below, unless notice of lien is refiled by the date in column (e), this notice shall constitute the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	Li Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/06	XX-XX-2984	05/28/07	06/27/17	5205.87
1040	12/31/06	XX-XX-2984	03/23/08	04/22/19	12694.51
1040	12/31/07	XX-XX-2984	08/29/08	09/24/18	17008.10
1040	12/31/07	XX-XX-2984	09/01/08	10/01/18	
1040	12/31/07	XX-XX-2984	01/04/10	02/03/20	
1040	12/31/08	XX-XX-2984	11/16/09	12/16/19	

Filed at: COUNTY RECORDER WASHINGTON E	Total	\$ 34,908.48
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This notice was prepared and executed at CHICAGO, IL
on this, 11st day of November, 2010.

Authorizing Official: MICHAEL W. COX	Title: ACS
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1872 *** PARTIAL *** F I A L *** PARTIAL *** COURT F DRIVING DATA

INTERNAL REVENUE SERVICE
FACSIMILE RELEASE of TAX LIEN| Lien Recorded : 05/28/2010 - 09:59AM
| Recording Number: 3792968
| UCC Number :
| Liber :
| Page :
| *Lien Part Rel* : 04/17/2011Area: SMALL BUSINESS/SELF EMPLOYED
Lien Unit Phone: (800) 913-6050

| IRS Serial Number: 7010

I certify that as to the following-named taxpayer, the requirements of section 6325(a) of the Internal Revenue Code have been satisfied for the taxes listed below and for all statutory additions. Therefore, the lien provided by Code section 6321 for these taxes and additions has been released.

Name of Taxpayer :

LAURIE R HAYES only.* LAURIE R HAYES only, in the
liability of TIMOTHY F & LAURIE R HAYES.

Residence :

812 N WILLIAM STREET
STILLWATER, MN 55082-4462

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/2006	XXX-XX-2984	05/28/2007	06/27/2017	
1040	12/31/2006	XXX-XX-2984	03/23/2009	04/22/2019	5205.87

The conditions for release of the Notice of Federal Tax Lien against TIMOTHY F & LAURIE R HAYES have been met by LAURIE R HAYES. This certificate releases the IRS's claim to property and rights to property as it pertains to the tax years identified above for LAURIE R HAYES only.

Filed at: COUNTY RECORDER
WASHINGTON E
STILLWATER, MN 55082

Total | \$ 5205.87

This notice was prepared and executed at CHICAGO, IL
on this, the 17th day of April, 2011.Authorizing Official:
Dir, Pay Comp

EXHIBIT

C

STATE OF MINNESOTA
COUNTY OF WASHINGTON

DISTRICT COURT
TENTH JUDICIAL DISTRICT

In the Matter of the Petition of:

**Court File No. 82-CV-11-5126
REPORT OF EXAMINER**

Wells Fargo Bank, N.A.;

**For a new Certificate of Title
After Mortgage Foreclosure Sale.**

Pursuant to a Notice of Case Filing as Court File No. 82-CV-11-5126 on August 31, 2011, in the above matter, I have examined into the title of the Petitioner and the truth and matters set forth in the Petition herein and now respectfully report to the Court as follows:

I.

That I have examined the original Certificate of Title No.59023 in the Office of the Registrar of Titles and the instruments which are noted as memorials and find as follows:

1. That the allegations of the Petition are true and correct;
2. That there is an additional Memorial being the Petition as Document No. 1208495 dated August 31, 2011 recorded September 13, 2011.
3. That the Petitioner is entitled to the relief requested subject to evidence presented at the hearing hereon as to the following:

- a. The occupant or occupants of the premises and any claimed interest therein

That no bankruptcy proceedings were instituted Laurie R. Hayes or any other parties in possession of said premises claiming an ownership interest therein at the time of commencement of the Cancellation of Contract for Deed, or Mortgage Foreclosure proceedings, or if this is a Proceeding Subsequent involving tax forfeited lands within 10 years through the period of redemption through the Cancellation of Contract for Deed or Mortgage Foreclosure proceedings; or during the period of time that the property forfeited for nonpayment of taxes.

If there was a bankruptcy, there must be an Order Granting Relief from the Automatic Stay pursuant to 11 U.S.C.362(d), if, at the time of the sheriff's sale or service of the notice of the Cancellation of the Contract for Deed;

- (1) The case was open, and the land was not exempt and had not been abandoned;

EXHIBIT

tabbies

C.

OR

(2) The case was open and the property was exempt or abandoned but no discharge had been entered, (Note: Exemptions only apply to individuals, and corporations and partnerships receive no discharge in a Chapter 7 proceeding).

OR

(3) The case had been closed but the property had not been scheduled.

If the property was exempt or abandoned prior to the sheriff's sale or service of a notice of cancellation of contract for deed, see above.

(1) If there was NO DISCHARGE prior to the sheriff's sale or service of a notice of cancellation of contract for deed, file:

(2) If there had been a DISCHARGE prior to the sheriff's sale or service of notice of cancellation of contract for deed, file:

(a) Certified copy of Local Form 4003-1(b) (exempt) or Local Form 6004-1(d) (abandonment), and

(b) Certified copy of Order of Discharge (if the abstract does not certify as to the date of discharge)

If the Bankruptcy Search discloses a bankruptcy proceeding during the period of redemption reinstatement of contract for deed, there must be evidence to support a finding that the 60-day period provided by 11U.S.C. 108(b) has expired without redemption or the securing of additional time for redemption.

II.

I require prior to hearing evidence of service of the Order to Show Cause in accordance with Minn. Stat. §508.39; Statement from Washington County Auditor/Treasurer as to the current real estate taxes and delinquent real estate taxes, and current name searches on Laurie R. Hayes as to federal and state tax liens and bankruptcies. **I request that the originals be filed with Court Administration and that my office be provided copies thereof. If the bankruptcy or federal and state tax lien searches reveal a bankruptcy or tax liens there needs to be a release from the Bankruptcy Court and the tax lien agency be it the IRS or Minnesota Department of Revenue need to be served.**

III.

I, therefore, recommend that an Order to Show Cause why the relief prayed for in said Petition should not be granted be served in the matter that is provided under Minn. Stat. §508.39 (also Minn. Stat. §284.17 and 284.18 on tax forfeiture) and proof of service. If service by certified mail, a copy of the signed receipt by the recipient, upon the following:

Laurie A. Hayes;
Timothy F. Hayes;
USAA Federal Savings Bank;

And the parties in possession, if any.

IV.

I require that copies of all of the documents requested by this Examiner's Report and the proposed Order be presented to me for review prior to 10 days of the scheduled hearing.

PRIOR TO SCHEDULING A HEARING DATE, PLEASE PROVIDE THE DATE TO OUR OFFICE SO THAT I MAY CONFIRM IT WITH MY SCHEDULE.

Upon the service of such Order to Show Cause and Hearing thereon after due notice, I recommend that the Court grant the relief prayed for in said Petition free of all memorials except Document Nos. 69465.

Dated: September 21, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward W. Simonet", written in a cursive style.

Edward W. Simonet
Examiner of Titles

1208495

Receipt#: 170631

PET

\$46.00



Certified Filed and/or recorded on:

9/13/2011 8:14 AM

1208495

Certificate #: 59023

Return to:
MACKALL CROUNSE & MOORE
901 MARQUETTE AVE #1400
MPLS MN 55402-2859

Office of the Registrar of Titles
Property Records & Taxpayer Services
Washington County, MN
Kevin J Corbid, County Recorder

PETITION

WELLS FARGO BANK NA

RE: LAURIE R HAYES AND TIMOTHY F HAYES